

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Edison, NJ, Employer**

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**Docket No. 13-1657  
Issued: February 3, 2014**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge

MICHAEL E. GROOM, Alternate Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 2, 2013 appellant, through counsel, filed a timely appeal from a March 20, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's compensation and medical benefits on the grounds that he no longer had any residuals or disability causally related to his accepted September 21, 2010 injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case was previously before the Board.<sup>2</sup> On September 21, 2010 appellant, then a 63-year-old mail handler, sustained injury to his left hand, shoulder and head when he was lifting flat tubs and trays of mail. He stated that he felt an electric pain from his head to his hands. Appellant notified his supervisor, sought medical treatment and stopped work on September 22, 2010.

On July 5, 2011 appellant filed an application for review of a March 23, 2011 merit decision denying his traumatic injury claim. The decision referenced review of medical records from a prior June 11, 2007 traumatic injury claim which also involved a cervical condition.<sup>3</sup> The Board remanded the case to OWCP to consolidate master case File No. xxxxxx149 with the present case File No. xxxxxx360 and to issue a *de novo* decision on the merits of the claim. The facts of the case as set forth in the prior decision are hereby incorporated by reference.

In an October 18, 2010 medical report, Dr. Rafael R. Lucila, Board-certified in internal medicine, reported that he initially treated appellant on September 22, 2010 after he sustained an injury on September 21, 2010 from lifting heavy mail tubs. He noted multiple medical problems as well as a prior history of significant bilateral cervical foraminal stenosis and disc extrusion C5-6. Dr. Lucila diagnosed cervicgia with radiculopathy most likely secondary to aggravated bilateral cervical foraminal stenosis and disc extrusion C5-6. He recommended a magnetic resonance imaging (MRI) scan of the cervical spine and possible electromyogram (EMG) and nerve conduction studies. Dr. Lucila further stated that cervical foraminal stenosis and disc extrusion C5-6 may be aggravated by lifting heavy objects, such as lifting heavy mail tubs.

In a November 9, 2010 medical report, Dr. Luminita Fulop, Board-certified in internal medicine, reported that appellant felt pain in his neck and arm after lifting heavy objects at work on September 21, 2010. He noted a prior 2007 neck injury for which appellant declined surgical intervention. Dr. Fulop diagnosed cervical radiculopathy and cervical strain.

In a November 23, 2010 diagnostic report, Dr. Michael L. Amoroso, a Board-certified diagnostic radiologist, reported that an MRI scan of the cervical spine revealed multilevel cervical degenerative disc disease, disc bulging C4-7 and right sided neural foraminal narrowing.

On September 18, 2012 OWCP referred appellant, a series of questions, a statement of accepted facts and the medical record to Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, for a second opinion examination.

In a September 18, 2012 report, Dr. Lakin reported that appellant sustained a work-related accident on September 21, 2010 when he was lifting tubs and trays of mail and felt pain from his neck into his left arm to the digits of his left hand. He noted a prior 2007 work-related

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<sup>2</sup> Docket No. 11-1620 (issued April 12, 2012).

<sup>3</sup> On April 27, 2007 appellant suffered a work-related traumatic injury when he was hit by an APCS machine cover. OWCP accepted the claim for concussion without loss of consciousness, claim File No. xxxxxx149. Appellant required cervical epidural injections and returned to full-duty work on September 25, 2007.

injury which required epidural steroid injections. Appellant was released to full-duty work on September 25, 2007. Dr. Lakin reviewed and summarized medical and diagnostic reports, including reports dating back to appellant's 2007 traumatic injury. He provided detailed findings on appellant's August 1, 2007 computerized tomography scan, an August 1, 2007 MRI scan of the cervical spine and a November 23, 2010 MRI scan of the cervical spine. Upon physical examination, Dr. Lakin opined that appellant sustained a sprain to the cervical spine as a result of the September 21, 2010 work-related accident. Examination revealed unremarkable with no disabling residuals of the accepted condition of cervical sprain. Dr. Lakin noted that cervical radiculopathy and cervical foraminal stenosis were not present and appellant was neurologically intact. He indicated that he could find no traceable disability relating to the September 21, 2010 employment incident with no objective findings as a result of a work-related aggravation. Thus, Dr. Lakin concluded that appellant could return to work full time without restrictions and had reached maximum medical improvement.

By decision dated October 11, 2012, OWCP accepted appellant's claim for a neck sprain resolved as of September 18, 2012.

By decision dated October 12, 2012, OWCP terminated appellant's compensation benefits effective October 11, 2012 on the grounds that Dr. Lakin's report established that he was not disabled due to residuals of the accepted condition.

By letter dated October 22, 2012, appellant, through counsel, disagreed with the October 12, 2012 OWCP decision and requested a hearing before the Branch of Hearings and Review.

Counsel resubmitted Dr. Fulop's November 9, 2010 report previously of record and a February 23, 2010 prescription note which stated that appellant was unable to return to work from September 22 to November, 2010 due to disability that resulted from work.

A hearing was held on February 6, 2013. Counsel for appellant argued that Dr. Lakin's report was not well rationalized and that an impartial referee evaluation was necessary.

By decision dated May 20, 2013, OWCP's hearing representative affirmed the October 12, 2012 decision terminating appellant's compensation benefits effective October 11, 2012. She found that the weight of the medical evidence rested with Dr. Lakin, who determined that the accepted employment-related neck sprain had resolved.

### **LEGAL PRECEDENT**

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> Once OWCP accepts a claim it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to his or her employment, it may not

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<sup>4</sup> 5 U.S.C. § 8102(a).

terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.<sup>5</sup> The fact that OWCP accepts an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on OWCP to demonstrate an absence of employment-related disability or residuals in the period subsequent to the date of termination or modification.<sup>6</sup>

### ANALYSIS

In a decision dated October 11, 2012, OWCP accepted appellant's claim for resolved sprain of the neck as a result of the September 21, 2010 employment incident. By decision dated October 12, 2012, it terminated his compensation benefits effective October 11, 2012 finding that his condition had resolved and was not experiencing any residuals or disability causally related to the September 21, 2010 injury. The issue is whether OWCP properly terminated appellant's compensation benefits effective October 11, 2012. The Board finds that it properly terminated appellant's benefits.

On August 29, 2012 OWCP referred appellant for a second opinion examination with Dr. Lakin, a Board-certified orthopedic surgeon. In his September 18, 2012 report, Dr. Lakin reported that appellant suffered a work-related accident on September 21, 2010 when he was lifting tubs and trays of mail and felt pain from his neck into his left hand. He noted a prior 2007 work-related injury which required epidural steroid injections and that appellant had been released to full duty on September 25, 2007. Dr. Lakin thereafter reviewed and summarized the medical and diagnostic reports of record, including reports dating back to appellant's 2007 traumatic injury. Upon physical examination, he opined that the examination was unremarkable with no disabling residuals of the accepted condition of cervical sprain. Dr. Lakin noted that cervical radiculopathy and cervical foraminal stenosis were not present and appellant was neurologically intact. He indicated that he could find no traceable disability relating to the September 21, 2010 employment incident. Thus, Dr. Lakin concluded that appellant was no longer disabled and capable of performing full-duty work. OWCP relied on his opinion in its October 12, 2012 and March 20, 2013 decisions, finding that he had no residuals or disability causally related to his neck sprain. The Board finds that Dr. Lakin's opinion is well rationalized and based on an accurate history, a review of the medical records and findings from physical examination.<sup>7</sup>

The Board notes that the other medical reports submitted from appellant's treating physicians date back to November 23, 2010 and were probative to the ultimate acceptance of appellant's claim, but do not discuss his condition as of October 2012. The Board has held that stale medical evidence cannot form the basis for current evaluation of residual symptomology or

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<sup>5</sup> *Edwin Lester*, 34 ECAB 1807 (1983).

<sup>6</sup> See *Elsie L. Price*, 54 ECAB 734, 739 (2003); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine* (*Gilbert H. Blaine*), 26 ECAB 351 (1975).

<sup>7</sup> *L.S.*, Docket No. 13-716 (issued June 4, 2013).

disability determination.<sup>8</sup> For this reason, the Board finds that these reports are of limited probative value regarding the current issue and do not create a conflict in medical evidence.

The Board finds that Dr. Lakin's opinion constitutes the weight of the medical evidence and is sufficient to justify OWCP's termination of benefits for the accepted condition. The Board also notes that there are no current reports from appellant's treating physicians establishing employment-related disability or supporting any continuing residuals of the accepted condition. Because appellant no longer has residuals or disability related to his accepted employment conditions, OWCP properly terminated entitlement to compensation and medical benefits effective October 11, 2012.<sup>9</sup> Accordingly, OWCP met its burden of proof and its decision to terminate his compensation and medical benefits shall be affirmed.<sup>10</sup>

On appeal, counsel contends that Dr. Lakin incorrectly found that appellant had no cervical radiculopathy, noting that appellant's May 25, 2011 EMG confirmed probable C5-7 radiculopathy. While counsel asserted that he was submitting a May 25, 2011 EMG study, the record before the Board does not contain this medical report.

The Board finds that Dr. Lakin's second opinion report is sufficiently rationalized to establish that appellant's employment-related neck sprain had resolved.<sup>11</sup> Thus, OWCP properly terminated appellant's compensation and medical benefits.<sup>12</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that OWCP met its burden of proof in terminating appellant's benefits effective October 11, 2012.

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<sup>8</sup> See *Keith Hanselman*, 42 ECAB 680 (1991); *Ellen G. Trimmer*, 32 ECAB 1878 (1981) (reports almost two years old deemed invalid basis for disability determination and loss of wage-earning capacity determination).

<sup>9</sup> *G.I.*, Docket No. 13-19 (issued April 2, 2013).

<sup>10</sup> *L.C.*, Docket No. 12-1177 (issued August 19, 2013).

<sup>11</sup> *C.S.*, Docket No. 12-163 (issued February 21, 2013).

<sup>12</sup> *D.M.*, Docket No. 11-386 (issued February 2, 2012); *Marshall E. White*, 33 ECAB 1666 (1982).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board